

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of HARRIETTE WILSON and U.S. POSTAL SERVICE,
POST OFFICE, Miami, FL

*Docket No. 99-1797; Submitted on the Record;
Issued August 11, 2000*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained a shoulder, arm, neck and hand condition due to factors of her employment; and (2) whether the Office of Workers' Compensation Programs properly refused to reopen the claim for merit review under 5 U.S.C. § 8128(a).

Appellant filed an occupational disease claim on October 5, 1995 alleging that on March 13, 1993 she realized that, following her return to work after an accepted work injury,¹ her duties of casing and delivering mail worsened her condition and brought on an onset of severe shoulder, arm, neck and hand pain.

In a decision dated May 17, 1996, the Office denied appellant's occupational disease claim on the grounds that fact of injury had not been established.

On April 25, 1997 appellant, through her representative, requested reconsideration of the May 17, 1996 decision and submitted additional evidence. In support of her request, appellant submitted a report dated March 24, 1996 from Dr. Stephen Wender, a Board-certified orthopedic surgeon, who stated that appellant had been seen in his office by Dr. Frederick Seley, another Board-certified orthopedic surgeon, for injuries sustained in 1994 to her right shoulder. Dr. Wender noted appellant's intermittent treatment since 1994 and that she continued to have persistent pain compatible with neurological dysfunction. He noted that a magnetic resonance imaging (MRI) scan and electrophysiologic testing should be conducted to further evaluate appellant's persistent symptoms and complaints.

¹ Appellant sustained an employment-related injury when a postal customer attacked her by pulling her right arm on January 22, 1990. The Office indicated that it destroyed the claim in 1994 after the file remained inactive for an extended period of time. Appellant filed a recurrence claim in January 1995 and her file was reconstructed to reflect previously submitted evidence. After review of the evidence, the Office determined that appellant had alleged additional work factors not present in the original claim and instructed her to file a CA-2 claim.

In a decision dated August 5, 1997, the Office denied modification of the May 17, 1996 decision.

On March 5, 1998 appellant requested reconsideration through her representative and submitted additional evidence. Appellant's counsel argued that her condition never improved and that she needed additional medical treatment to prevent permanent disability. In support of appellant's request, the Office received, among previously submitted evidence, a treatment note and letter from Dr. Wender, dated January 16, 1998 and a letter report from Dr. Julian Clark, an attending physician, dated December 17, 1997. Dr. Wender reported in his note that appellant complained that day of pain in the neck radiating into her head and both shoulders with significant low back pain. He stated:

"[T]hough I find no focal neurological deficits, she does have significant complaints.... At this time I think she has had a flare. I think her prime problem is an underlying myofascial pain syndrome with associated cervical radiculitis. I do think at this time it medically necessary to proceed with electrophysiologic workup ... once it can be authorized. She may also require an MRI scan of the left shoulder to better evaluate the underlying pathology."

In his letter dated January 16, 1998, Dr. Wender opined that all of appellant's injuries related back to her accepted injury in 1990 and that the 1994 incident believed to be a separate accident was actually an exacerbation of prior conditions. Dr. Clark, in his letter report, indicated that appellant had been in his care since 1990 for severe pain in her right shoulder and neck and after evaluation on March 11, 1993, he related her continued complaints of pain to the 1990 employment incident. Dr. Clark concluded that appellant still suffered discomfort and recommended that she be seen by a workers' compensation orthopedist for her condition.

In a decision dated June 2, 1998, the Office denied modification of the August 5, 1997 decision based on a review of the merits. The Office found that the evidence submitted in support of appellant's application failed to establish that her condition was caused by employment factors and, therefore, insufficient to warrant modification of the August 5, 1997 decision.

On February 5, 1999 appellant, through her representative, requested reconsideration of the June 2, 1998 decision and submitted evidence that had been previously considered by the Office.

By decision dated March 22, 1999, the Office denied appellant's application for review on the grounds that she failed to submit new and relevant evidence to support her claim.

The Board has duly reviewed the case record on appeal and finds that appellant failed to meet her burden of proof in establishing that she sustained a shoulder, arm, neck and hand condition due to factors of her federal employment.

An employee seeking benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was filed within the applicable time limitation of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or occupational disease.⁴

In an occupational disease claim such as this, claimant must submit: (1) medical evidence establishing the existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the disease; and (3) medical evidence establishing that the employment factors were the proximate cause of the disease or, stated differently, medical evidence that the diagnosed condition is causally related to the employment factors identified by claimant.⁵

The medical evidence required is generally rationalized medical opinion evidence, which includes a physician's opinion of reasonable medical certainty based on a complete factual and medical background of the claimant and supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by claimant.⁶ Neither the fact that appellant's condition became apparent during a period of employment nor appellant's belief that the condition was caused by her employment is sufficient to establish a causal relationship.⁷

In this case, appellant has established the existence of her diagnosed condition of shoulder, arm, neck and hand pain and has identified work factors she believes to have caused her condition. Appellant has failed to establish through the medical evidence that her condition resulted from such employment factors. The only evidence of record which discusses causal relationship are reports from Dr. Wender and Dr. Clark, who both related appellant's condition to her 1990 employment incident. Dr. Wender, in a report dated January 16, 1998, opined that all of appellant's injuries related back to the accepted injury in 1990. Dr. Clark, in a December 17, 1997 report, similarly noted that after a March 11, 1993 evaluation he believed that appellant's continued complaints of pain were related to the 1990 employment incident. This evidence, however, is insufficient to establish causal relationship. Neither physician supported his opinion that appellant's condition was related to the 1990 employment incident by medical rationale or even discussed whether the alleged duties of casing and delivering mail

² 5 U.S.C. § 8101 *et seq.*

³ *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Daniel J. Overfield*, 42 ECAB 718, 721 (1991).

⁵ *Jerry D. Osterman*, 46 ECAB 500 (1995); *Victor J. Woodhams*, 41 ECAB 345, 352 (1989).

⁶ *Victor J. Woodhams*, *supra* note 5.

⁷ *Kathryn Haggerty*, 45 ECAB 383, 389 (1994).

caused appellant's condition. An award of compensation may not be based upon surmise, conjecture or speculation or upon appellant's belief that there is a causal relationship between her condition and her employment.⁸ To establish causal relationship, a physician's opinion must be based on a complete factual and medical background and be supported by medical rationale explaining the nature of the relationship between the condition and the employment incident.⁹ Appellant has failed to submit rationalized medical opinion evidence to support her claim and, therefore, has failed to discharge her burden of proof.

The Board further finds that the Office properly denied review of the merits in this case.

To require the Office to reopen a case for merit review under section 8128(a) of the Federal Employees' Compensation Act,¹⁰ the Office's regulations provide that a claimant's application for reconsideration must set forth arguments and contain evidence that (i) shows that the Office erroneously applied or interpreted a specific point of law, or (ii) advances a relevant legal argument not previously considered by the Office, or (iii) constitutes relevant and pertinent new evidence not previously considered by the Office.¹¹

In this case, new medical evidence relevant to appellant's claim did not accompany her February 5, 1999 request for reconsideration. As such, appellant has not shown that the Office erroneously applied or interpreted a specific point of law, or advanced a point of law or fact not previously considered by the Office, or submitted relevant and pertinent evidence not previously considered by the Office. Accordingly, the Board finds that the Office properly declined to review appellant's request for reconsideration.¹²

⁸ *William S. Wright*, 45 ECAB 498 (1993).

⁹ *Gary L. Fowler*, 45 ECAB 365 (1994).

¹⁰ 5 U.S.C. §§ 8101-8193. Under section 8128 of the Act, "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or application." 5 U.S.C. § 8128(a).

¹¹ 20 C.F.R. § 10.606(b) (1999).

¹² *See Norman W. Hanson*, 45 ECAB 430, 435 (1994).

The decisions of the Office of Workers' Compensation Programs dated March 22, 1999 and June 2, 1998 are affirmed.

Dated, Washington, D.C.
August 11, 2000

Michael J. Walsh
Chairman

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member